From: Marian
To: Microsoft ATR
Date: 12/7/01 6:41pm
Subject: Microsoft Settlement

I am sending this email as a comment on the proposed settlement between the US Department of Justice and Microsoft Corporation.

The settlement, as it has been published, does not protect the rights of consumers, nor does it impose a remedy that will allow competition in the software markets in which Microsoft has already demonstrated its illegal business practices. As has been amply demonstrated by the consent decree signed by Microsoft to settle a previous anti-trust suit, mere words on paper do not reign in their practices. More strenous oversight is needed, or any settlement will be shown to be as worthless as the last.

The largest competitor to Microsoft Internet Information Server is Apache, from the Apache Foundation. A not-for-profit organization. It, along with Sendmail and Perl, also from not-for-profit groups, are very widely used in Internet applications. My concern is that according to the language of the proposed settlement, these organizations have no rights at all.

Specifically the language in section III(J)(2) says that it need not describe nor license API, Documentation, or Communications Protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business, (c) "meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business". This language gives Microsoft the right to deny the very existence, and continue any and all of their anti-competitive practices against Open Source projects, or even any company they do not deem viable.

I also question the advisability of allowing Microsoft to define the criteria of "reasonable, objective standards" as they are the party guilty of violating our nation's laws in the first place. Should not these definitions be imposed by an external body that does not have Microsoft's interests formost in their minds?

Section III(D), which deals with disclosure of information regarding the APIs for incorporating non-Microsoft "middleware" contains language which is equally disturbing. In this section, Microsoft discloses to Independent Software Vendors (ISVs), Independent Hardware Vendors (IHVs), Internet Access Providers (IAPs), Internet Content Providers (ICPs), and Original Equipment Manufacturers (OEMs) the information needed to inter-operate with Windows at this level. Yet, when we look in the footnotes at the legal definitions for these outfits, we find the definitions specify commercial concerns only. Under these definitions, Open Source is again shut out, as are government entities and

any other not-for-profit group.

I can not accept with any degree of credibility that Microsoft will not exploit any perceived flaw in the actual language of any remedy which is imposed on it. Additionally, the currently proposed remedy will only stay in effect for a period of 5 years. How are we to believe that Microsoft will not simply revert to their current illegal business practices after the 5 years have passed?

The remedy as proposed, is flawed in both its language and scope. I urge the court to seek a more appropriate and stringent solution and hope that it will act in the best interests of the American people, rather than ignore Microsoft's previous flagrant violation of an insufficient remedy.

Thank you.

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